

A.I.D. EVALUATION HIGHLIGHTS NO. 15

STRENGTHENING DEMOCRATIC INSTITUTIONS: THE CASE OF HONDURAS

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SUMMARY

Beginning in the mid-1980s, the Agency for International Development (A.I.D.) began to provide assistance to a number of Central American and Caribbean nations to strengthen their democratic institutions. One element of this effort included support for improving the efficiency and effectiveness of the judicial branches of government. This activity, identified as the Administration of Justice (AOJ) program, has since been implemented by a number of nations in South America and currently represents a major component of the entire A.I.D. democracy and governance initiative in Latin America.

As part of a series of strategic assessments of legal development programs financed by A.I.D. and other donors, the Center for Development Information and Evaluation (CDIE) undertook a field study of the A.I.D. Honduras AOJ effort in late 1992. The purpose of the field study was to review project progress in reforming judicial performance, to analyze factors facilitating or constraining progress, and to raise general issues that need to be addressed in order to formulate more effective A.I.D. strategies in improving legal systems in countries like Honduras.

The Honduran judiciary exemplifies many of the characteristics found in early developing countries, including major shortages of staff and budgetary resources and antiquated administrative and judicial procedures. The burgeoning case backlogs create inordinate delays in rendering justice. And, in many instances, the use of judicial services are beyond the financial means of most people. Finally, the autonomy of the judiciary is frequently compromised by outside interference and manipulation. To address these deficiencies, A.I.D. and the Government of Honduras are collaborating in a bold and ambitious effort to enhance the professionalism and independence of the judicial branch.

A major goal of the Honduras AOJ program is to assist the judiciary in the transition from a traditional system of patronage appointments to one of merit. Appointments would be processed through open, competitive examinations, and personnel performance and promotions objectively assessed through annual evaluations. The merit system is designed to build a career service and to raise the professional and technical qualifications of judicial personnel. A second goal of the AOJ program involves an effort to enhance the financial management capacities of the judiciary.

and expand its revenue base. A third goal involves focusing on improving the quality of judicial public services.

The CDIE assessment revealed that considerable progress has been made in the design of a merit system for a judicial career service. The system is being applied in appointing new staff, but has yet to be implemented for internal performance appraisals and promotions. The CDIE study also revealed the uncertainty that many Hondurans feel about the new merit system's ability to withstand the larger political pressures for patronage appointments. This uncertainty reflects the fact that patronage appointments are pervasive throughout government agencies and that the major political parties use these appointments to reward followers and generate revenue.

Regarding the secondary goal of financial management enhancements, A.I.D. has assisted in computerizing the judiciary's entire budget, accounting, procurement, and auditing procedures. It is hoped that these improvements will help convince the Ministry of Finance to allocate a larger budget to the judiciary. Some minor increases in its budget have been granted, but it is still too early to definitively conclude about future prospects in this area.

With regard to improving the provision of judicial services, a large cadre of young attorneys have been hired to serve as public prosecutors, public defenders, and justices of the peace. In sample interviews, they were highly dedicated to their work and felt that they had improved the quality of judicial proceedings. However, they also indicated that major structural reforms will be required in order to achieve significant gains in judicial efficiency and effectiveness.

The Honduras AOJ experience highlights a number of generic issues that need to be addressed with regard to the design of judicial reform projects in similar country settings. These issues include the feasibility and necessity of replacing patronage with merit systems as a precondition for judicial improvement in patrimonial political systems; the need for generating greater in-country public pressure and advocacy for judicial reform; the design of strategies that make legal services more accessible to the general population and finally, the linking of legal development strategies with those sectors of society that might be the natural and more active proponents of judicial reform.

BACKGROUND

U.S. Government interest in judicial reform arose in the early 1980s with the breakdown of the rule of law in El Salvador and the growing recognition, as highlighted by the Kissinger Commission report, for the need of providing greater support for economic and political development in the Central American and Caribbean area. Thus, by the mid- and late-1980s, strengthening democratic institutions, including the judiciary, became a cornerstone of U.S. policy, not only in the Central American/Caribbean region, but in the ascending democratic governments in South America. A.I.D. support for judicial reform, in the form of AOJ projects, spread throughout the region.

As an outcome, in the mid-1980s Honduras became a major recipient of A.I.D. funds in support of democratization. In 1985, the A.I.D. Mission provided assistance in voting registration and in the administration of the national presidential and congressional elections. Likewise, through a regionwide A.I.D. funded program to the Latin American Institute for the Prevention of Crime and Treatment of the Offender, training, technical assistance, and commodities were provided to strengthen the Honduran judiciary. This effort was bolstered in 1989 by the initiation of a bilateral democracy project with the Government of Honduras, which focused on improving the performance of the judiciary.

A.I.D.'S APPROACH

The A.I.D. bilateral project identified a range of problems that have constrained the efficiency and effectiveness of the judiciary and limited public confidence in the system. These constraints include the following:

- ! *Increased Case Backlogs.* The backlog in criminal prosecutions is such that many accused are detained for months and years awaiting pretrial, trial, and sentencing procedures.
- ! *Diminished Credibility.* There are widespread public perceptions that many judges are incompetent and corrupt and that the courts are more attuned to serving the powerful and privileged than to rendering justice in a timely and fair manner to less advantaged litigants.
- ! *Political Interference.* The judicial branch, particularly in the appointment of judges and court personnel, has been vulnerable to politics and manipulation by the legislative and executive branches of government.

To address these constraints, A.I.D. devised an *institution-building strategy*, which emphasizes enhancing the autonomy of the judiciary, modernizing court procedures, and upgrading the professionalism of judicial personnel. The principal components of this strategy include the following:

- ! *Judicial Career Law.* In 1980, the Government of Honduras enacted a Judicial Career Law, which provides for a nonpolitical system of appointing judges and other justice system personnel. Implementation of the Judicial Career Law has become the centerpiece of the A.I.D. bilateral project.
- ! *Judicial Budget.* A major goal of the bilateral project has been to increase the budget of the judicial branch and modernize the procedures with which it manages its financial resources.
- ! *Judicial Services.* A third component has focused on improving the provision of judicial services by raising the number and professional qualifications of justices of the peace, public defenders, and prosecutors.

The first phase of the bilateral A.I.D./Government of Honduras judicial reform effort ran from 1989 to 1992, with a follow-on phase extended to 1995. It is anticipated that the assistance program will last 10 years or more in order to consolidate and sustain the reforms envisaged in the project.

FINDINGS

The following are the key findings involving the project's advances and impacts in the three component areas. An analysis of factors which serve to facilitate or constrain progress in achieving fundamental reforms in judicial performance is also discussed.

Judicial Career Law

The full and complete implementation of the Judicial Career Law, enacted in 1980 but never executed, became the cornerstone of the Honduran AOJ project. The Judicial Career Law provides for a fully professional judiciary, except for the nine member Supreme Court, which is appointed by the legislature after each national election every 4 years. Otherwise, all judicial personnel appointments are to be based on merit and open recruitment, thereby ending a long tradition of patronage-based employment.

To assist the Government of Honduras in implementing the law, A.I.D. supported the judiciary in developing an entirely new personnel system. This system included the formulation of salary scales and job classifications, as well as technical manuals and procedures for the recruitment, examination, selection, evaluation, and promotion of the entire judicial staff.

The assessment found that under the new system introduced by the project, many new personnel entering the judiciary secured their appointments based on merit. Since the design and adoption of systematic personnel procedures is still under development, it is too soon to know whether these procedures will be faithfully utilized in appraising and promoting existing staff through more objective performance criteria.

The full adoption of the Judicial Career Law constitutes a major break with tradition. For the judiciary, the move to a meritocracy represents a major reconfiguration of power in its external relations with the executive and legislative branches, bringing the judiciary, at least in the formal sense, more in line with the recognizable attributes of a modern democracy. The internal dynamics of the judiciary should change as well, as personal rule and favoritism now have to give way to the discipline and regularized procedures of more rationalistic norms.

Given the profound structural changes the project is seeking to make, it is not surprising that many judicial personnel, and in particular new appointees, are concerned that the institutionalization of the Judicial Career Law as an integral feature of the judiciary will require extended A.I.D. support. In their estimation, a move by A.I.D. in the near future to phase out its involvement would allow for the revival of the patronage system with all of its baleful effects on professionalism and morale.

That some aspects of the patronage system might still hold sway or return in full within the judiciary are not to be dismissed. Patronage is pervasive throughout the Government, from the top of the managerial hierarchy to the lowest functionaries. Political elites use patronage to build alliances to compete with rivals. The two major political parties use patronage as a means of mobilizing finances by dispensing the rewards of government employment to their followers and then taxing their salaries to beef-up party coffers.

In a political system with notable patrimonial features, such as in Honduras, patronage performs a number of important political functions. Thus, there are still pressures and incentives emanating from within and outside the Government to stay with the status quo. As a result, judicial positions remain short and without tenure, thereby allowing each newly elected president and congress to remove and appoint new personnel as a means of rewarding the party faithful and assuring a source of financial support.

There is some evidence that Honduras may be at the beginning of a transition from a government administration based on patrimony to one of a more technocratic orientation and an attendant emphasis on “rules of the game,” which value professionalism and proficiency over personalism and clientalism. If this trend should continue, it would augur well for the AOJ effort in reinforcing the kinds of structural reforms now being undertaken in the judicial branch.

Judicial Budget

The second thrust of the Honduran AOJ project focuses on increasing the judicial budget and improving the capacities of the judiciary to manage financial resources. An increase in budget for a woefully underfinanced court system is absolutely necessary over the long term in order to expand the accessibility, effectiveness, and efficiency of judicial services. In order to make a strong case for an increased budget, the project has sought to introduce modern computerized systems in budgeting, accounting, procurement, and auditing procedures, thereby making more transparent and accountable the internal processes of resource allocation and expenditure.

These improvements enabled the judiciary in 1992 to submit for the first time coherent plans and well-justified requests for budget increases. However, the Ministry of Finance has been able to provide only modest increases to these proposals as they are constrained by stringent International Monetary Fund ceilings on budgetary expenditures. Thus, the judiciary still suffers from serious shortfalls in funding, which will likely persist until the Honduran economy begins to improve and generate more revenue for what is now a very hard-pressed Government having to cope with the effects of retrenchments as an outgrowth of a structural adjustment program.

Judicial Services

The third key component of the Honduran AOJ project involves improving judicial services through the introduction over the last several years of a new cadre of young, high-quality attorneys to positions of justices of the peace, public defenders, and public prosecutors. Thus, of the 322 justices of the peace scattered throughout the country, 81 are young lawyers recruited through open competitive exams under the Judicial Career Law. The justices are the circuit riders of the justice system and constitute the first line of interaction with the Honduran public. Prior to the introduction of the AOJ project, most of the justices of the peace had little formal education.

Traditionally, the number of public defenders and prosecutors in the judiciary was small and their role limited within a relatively unsupportive judicial system. In order to enhance their position and make them a more integral feature of the judicial process, the project recruited 49 young attorneys, again, through open competitive exams, to serve as public defenders and prosecutors.

In extensive interviews with the new public defenders and prosecutors, it was apparent that these young attorneys were bringing a high level of energy and commitment to their work, with most of them feeling relatively upbeat about the contributions they were making to improving the performance of the justice system. They felt that through their efforts trials had become somewhat speedier and that they were improving court effectiveness by securing more and better evidence into the courts in criminal litigation.

Along with a positive sense that they were making an important contribution to improving the quality of judicial proceedings, the public defenders and prosecutors identified a range of fundamental structural deficiencies that continue to seriously limit their ability to move defendants through the judicial process in a speedy and fair manner. These include the following:

- ! Many cases, which have little merit and should be dismissed, congest the courts and add to their current backlog. Yet many judges insist on a full trial.
- ! Despite the fact that in many instances defendants plead guilty, the law requires a trial, rather than allowing the process to move directly to sentencing.
- ! Judges are so busy engaging in the investigation of new cases that they have little time for issuing decisions of innocence or conviction and sentencing on pending cases.

As a consequence of these constraints, many defendants are in prison for months awaiting pretrial proceedings, and once the trial begins they can wait another 2 to 4 years or more awaiting the completion of the trial. The public prosecutors and defenders felt that until these fundamental deficiencies in the judicial process were addressed it would be difficult to make significant inroads in reducing case backlogs, expediting the investigatory and trial/sentencing process, reducing that large part of the prison population who should not be in prison, and thereby creating a more fair and efficient judicial system.

The most frequently mentioned areas for change coalesced around the following reform agenda:

- ! Redefine the role of judges, limiting their function to that of judging and not with the conduct of investigating charges.
- ! Hire more judges, public prosecutors, public defenders, and support staff to expedite the timely processing of current caseloads.
- ! Convert to an oral system, thus abolishing the current practice of written trails, which consume too much time.
- ! Establish out-of-court conciliation mechanisms to reduce court caseloads.

In summary, the impact of the three-pronged AOJ program strategy is still in a formative stage of evolution and development. Some gains have been made in moving forward with the application of the Judicial Career Law, primarily with the hiring of the new public prosecutors, public defenders, and justices of the peace; some marginal progress has been shown on the budget front; and modest impacts are being generated in judicial services.

STRATEGIC ISSUES

A central objective of the CDIE assessment of legal systems development is to identify strategic issues that will provide general insights for improving the design and implementation of programs in this area. The following are some of the major issues and questions that have arisen from the Honduran AOJ experience.

Patrimonial Versus Merit Systems. The Honduran AOJ program strategy rests on the assumption that building a career service based on merit rather than patronage is a necessary prerequisite for engaging in improvements in the judicial system. For Honduras, where patronage is as pervasive as in similar developing countries and where opposition to civil service reform is considerable, the question arises whether a donor can settle for insisting on higher levels of professional qualifications in patronage appointments. In brief, how far can one realistically go in seeking to eliminate politics from the judiciary? Can the level of judicial competence and professionalism be raised without having to wage warfare against well-ingrained patronage systems? Is there a middle ground between these two opposing ways of doing business?

Supply Versus Demand. The appropriateness and feasibility of building a merit-based judicial system gives rise to the larger issue of whether a donor can depend on the judiciary and host-government alone to initiate and sustain major reforms without the spur of public pressure. The primary emphasis of the AOJ program strategy has been on a supply-side, institution-building effort, with little attention devoted to building external constituencies and pressure groups in the public at large who might work on behalf of a stronger and more autonomous judiciary.

The challenge of mobilizing greater public demand and support for judicial reform is that Honduras, like many early developing countries, has a weak civic and civil society. The level of urbanization and

attendant social and economic differentiation by class and functional group is still emerging. Thus, the development of potential interest groups and constituencies in support of governmental reform may take longer than in other more advanced developing countries.

Monocentric Versus Polycentric. In Honduras, which has a tradition of authoritarianism and political instability, a monocentric emphasis on building the formal institutions of government such as the judiciary may be a high-risk approach, given that less democratic or more conservative ruling coalitions might emerge to reverse advances in project-sponsored court judicial improvements or seek to use the courts to suppress moves toward greater economic and political liberalization.

In countries like Honduras, a more polycentric strategy featuring a diversified portfolio of donor investments in legal development activities in both the government and nongovernmental sectors might seem more appropriate. In the latter category, investments in expanding the infrastructure of local, nongovernmental organizations' legal services and advocacy groups for judicial reform might serve as a means of sustaining momentum and interest in legal advances in the face of opposition or indifference within the government.

Intensive Versus Extensive Benefits. The investigation and prosecution of criminal as well as civil cases is a labor intensive enterprise, involving police, attorneys, judges, and legions of support staff. The processing of cases through the formal legal system is a labor intensive, relatively high-cost enterprise involving the employment of attorneys, judges, and legions of support staff. This type of legal system tends to be associated with relatively affluent, modern industrial societies. In most developing countries, however, few people can afford the time and money to use this more conventional approach to legal services.

The Honduras case suggests that for poor countries donors need to consider strategies that can spread the benefits of the law more extensively; that is, donor strategies should enable benefits to reach beyond the very restricted number of immediate beneficiaries who are served by more conventional individual case processes that run through a cumbersome and slowly functioning judicial system. A less conventional approach might involve targeting attention on class action or test cases which, as a result of favorable rulings, benefits large classes of individuals, such as the rights of women or minorities, agricultural tenants, or certain categories of legal issues such as property or contract rights.

Legal or Constituency-led Change. The Honduras AOJ program is premised on a judicial institution-building strategy with a primary focus on improving the performance of the criminal legal system. An enduring issue is that the criminal legal system continues to suffer from inadequate government funding, a condition that prevails in most developing countries as well as in many developed countries. This underfunding reflects the fact that few constituencies have an immediate vested interest in promoting adequate funding for criminal adjudication.

In this context, the question arises as to whether different approaches might be taken in tailoring judicial improvement strategies to sectors that would have more of a stake in supporting such efforts.

Likely candidates would be the business sector or middle class who might have a strong vested interest in supporting improvements in commercial and civil law proceedings. The multiplier effects of constituency-led improvements in the commercial or civil law sector may spill over to help advances in the capacities of the criminal sector.

FUTURE PROSPECTS

With only a 4-year track record, it is too early to judge the prospects of sustaining innovations introduced in Phase I of the Honduras AOJ project. Phase II began in late 1992 and includes a range of new initiatives, some of which are designed to support mass education campaigns to inform the public of their legal rights, assist in the development of citizen watchdog groups to monitor court performance, strengthen the Inspector General's office to investigate charges of judicial corruption, and develop a system of case tracking to improve court efficiency.

The question arises about whether the Government of Honduras and the judiciary will move forward with a reform agenda with greater self-initiative, thereby allowing A.I.D. to assume a less active leadership role in sustaining the process of institutional change. There are some signs that the Government of Honduras might be prepared to assume a more paramount role in this effort. Thus, in 1991 the Government set up a State Modernization Committee and it is now submitting proposals supportive of judicial reform to the Congress. Similarly, in 1992 a human rights commission was established that will report directly to the President of Honduras. The United Nations Development Programme is helping to fund both efforts and is contemplating further assistance in the provision of training in human rights for the police, judges, school teachers, and the general public.

The A.I.D. Mission in Honduras recognizes that the national elections of 1993 and 1996 are watersheds for the AOJ effort. The critical question for the new Honduran administration that will take power is whether it will provide strong proactive leadership in continuing the judicial reform effort. For this reason and because the Honduran AOJ effort represents an ambitious strategy in structural reform, the project will merit close A.I.D. attention over the next several years for issues and insights concerning the more generic problem of judicial reform.

This Evaluation Highlights was prepared by Gary Hansen of the Center for Development Information and Evaluation (CDIE). The Highlights summarizes the findings of the report A Strategic Assessment of Legal Systems Development in Honduras, Technical Report No. 10, June 1993 (PN-AAX-267). The report can be ordered from the DISC, 1611 North Kent Street, Suite 200, Arlington, VA 22209-2111. Telephone (703) 351-4006, Fax (703) 351-4039.